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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/098,689

03/15/2002

Alex Mashinsky

4330-4003US1

5184

27799

7590

02/28/2007

COHEN, PONTANI, LIEBERMAN & PAVANE  
551 FIFTH AVENUE  
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NEW YORK, NY 10176

EXAMINER

ABDI, KAMBIZ

ART UNIT

PAPER NUMBER

3621

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/098,689

Applicant(s)

MASHINSKY, ALEX

Examiner

Kambiz Abdi

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. The prior office actions are incorporated herein by reference. In particular, the observations with respect to claim language, and response to previously presented arguments.

- Claims 1 and 4 were amended.
- Claims 5-16 are added
- Claims 1-16 have been considered.

### ***Claim Objections***

2. Claims 9-10 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The above-mentioned claims are directed to method steps, which they are dependent on claims that are apparatus claims.

### ***Response to Amendment***

3. Applicant's arguments filed November 30, 2006 have been fully considered but they are not persuasive as well as they are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,005,926 to Alexander Mashinsky in view of U.S. Patent No. 6,047,054 to Jeanne A. Bayless.

6. As per claims 1 and 3, Mashinsky clearly teaches the method and apparatus for monitoring and reporting performance information relating to data transmission, comprising:

receiving at a processor an electronic data transmission addressed to a network service provider (See Mashinsky column 2, lines 16-30 and 44-48, column column 3, lines 60-68);

routing the data transmission from the processor to the network service provider (See Mashinsky column 4, lines 9-37);

monitoring at the processor a portion of the data transmission while the data transmission is in progress (See Mashinsky column 5, lines 57-64, column 7, lines 5-8, column 8, lines 47-65, and column 19, lines 7-16);

generating at the processor performance information associated with the data transmission based on the monitored data transmission (See Mashinsky column 5, lines 57-64, column 7, lines 5-8, column 8, lines 47-65, and column 19, lines 7-16);; and

reporting the performance information to a third party (See Mashinsky column 5, lines 57-64, column 7, lines 5-8, column 8, lines 47-65, and column 19, lines 7-16).

Meshinsky is not specific on transmission of the data is in progress of not and how it is processed at the processor. However, Bayless is clear and specific on the process is taking place in a server (See Bayless figures 1-4 and column 9, lines 1-31 and column 11, lines 14-40). Therefore, it would have been obvious to one having ordinary skill in the art at the time the current invention was made to combine the two concepts to combine the teachings of the Meshinsky and Bayless to have a more control and better performance in one place for tracking and keeping data and more efficient information process.

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7. As per claims 2 and 4, Mashinsky teaches all the limitations of claims 1 and 3, further Mashinsky teaches,

Storing the performance information in database (See Mashinsky column 5, lines 28-35, column 6, line 7-column 7, line 8).

8. As per claim 5 and 14, Mashinsky teaches all the limitations of claims 1 and 3, Mashinsky teaches the processor is a central controller. Further, Bayless clearly teaches a central office process to process the information at a server centrally located (See Bayless figures 1-4 and column 9, lines 1-31 and column 11, lines 14-40).

9. As per claims 6-16, Mashinsky teaches all the limitations of claims 1 and 3, and further Bayless clearly teaches all the limitations of claims 6-16 as discloses based on how long a call was on hold, the call was dropped or not, who drop the call the calling party of the receiving party, level of service (See Bayless figures 1-4 and column 9, lines 1-31, column 11, lines 14-40, column 31, line 50- column 32, line 29, column 40, line 59- column 41-line 25, column 59, line 52- column 60, line 30) The same rational as above can be applied to the rejection of these claims.

10. Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

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### **Conclusion**

Applicant's amendment and new claims necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the examiner should be directed to **Kambiz Abdi** whose telephone number is **(571) 272-6702**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Andrew Fischer** can be reached at **(571) 272-6779**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see;

**<http://portal.uspto.gov/external/portal/pair>**

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks  
Washington, D.C. 20231**

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or faxed to:

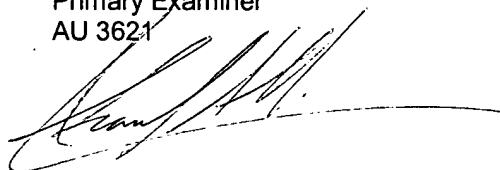
**(571) 273-8300** [Official communications; including After Final communications labeled "Box AF"]

**(571) 273-6702** [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to the Examiner in the

**Knox Building, 50 Dulany St. Alexandria, VA.**

**Kambiz Abdi**  
Primary Examiner  
AU 3621

A handwritten signature in black ink, appearing to read 'Kambiz Abdi', is written over a horizontal line.

**KAMBIZ ABDI**  
**PRIMARY EXAMINER**

**February 19, 2007**